and seventeenth centuries, it was seriously narrowed, so that as to contracts and torts it included only those which were consummated upon the sea.[2] Later, this rule, based solely on locality, was somewhat relaxed as to contracts.[3] In the United States, admiralty jurisdiction has always been considered more comprehensive than was the English jurisdiction at the time of the adoption of our Constitution.[4] In contracts our courts have disregarded the locality test, and have considered simply whether the transaction is of a maritime nature.[5] But as to torts they continued until recently to limit their jurisdiction by locality so as to exclude a tort by a vessel to things on land and to include a tort by things on land to a vessel.[6]

A comparatively late case, however, has required that the tort shall also be maritime in nature.[7] This decision, although directly overruling no previous cases, because, as a matter of fact, in all of them the tort was fairly maritime, was an important limitation in the direction of assimilating the jurisdiction of contracts and of torts. It meant that the locality test had given way to the universal test of the maritime character of the event, except in the one class of cases in torts of injury by a vessel to some person or thing on land. And the Supreme Court of the United States seems now to have abolished this exception by taking jurisdiction of damage by a faulty vessel to a beacon light solidly attached to the bottom of the sea. *United States* v. *Evans*, 25 Sup. Ct. Rep. 46. Although the majority of the court carefully confine themselves to the exact facts before them, Mr. Justice Brown, concurring, seems justified in his conclusion that the decision cannot logically stop half-way, but really brings the United States into line with the present statutory jurisdiction in England in including "any claim for damage done by a ship."[8] If that is true, then the locality test is finally abandoned and the maritime character of the transaction is made the sole test. This result is commendable. As a matter of first principles it seems equally logical for admiralty to exclude the non-maritime and to include the maritime. It may be objected that these two recent cases establish an indefinite test that will increase the perplexity and uncertainty of the jurisdiction. But no serious difficulty has been remarked in determining what contracts are maritime, and torts would seem equally amenable. Furthermore, there appears to be as much reason in sense and justice for this change as existed in the case of contracts. Just as admiralty should include a contract of marine insurance made on land and should exclude a mortgage of realty made at sea, so it should include damage to a pier by the faulty navigation of a ship and should exclude slander by one passenger of another.[9]

LIABILITY OF BANK TO DEPOSITOR AFTER COLLECTION OF DRAFT BY CORRESPONDENT. — When a draft deposited for collection at a distance is forwarded by the depositary bank to its correspondent, and the latter, after collecting, fails to account, the depositary bank is by the majority of

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[2] See De Lovio *v.* Boit, 2 Gall. (U. S. C. C.) 398, 403 ff.
[3] See Insurance Co. *v.* Dunham, 11 Wall. (U. S.) 1, 24.
[4] See De Lovio *v.* Boit, 2 Gall. (U. S. C. C.) 398, 472.
[5] Insurance Co. *v.* Dunham, 11 Wall. (U. S.) 1.
[6] The Plymouth, 3 Wall. (U. S.) 20; Hermann *v.* Port Blakely Mill Co., 69 Fed. Rep. 646.
[7] Campbell *v.* Hackfeld & Co., 125 Fed. Rep. 696 (1903).
[8] Admiralty Court Act of 1861, 24 Vict. c. 10, § 7; The Swift, [1901] P. 168.
[9] Benedict, Admiralty Prac., 3d ed., § 308.

courts held liable on the theory that it is an independent contractor, and responsible as such for default of its agents.[1] Many courts deny liability on the ground that the depositor authorizes the appointment of the collecting bank as his sub-agent, and can therefore hold the depositary bank only for negligence in making the selection.[2] *Holder* v. *Western German Bank*, 132 Fed. Rep. 187 (Cir. Ct., S. D. Oh.). And in the majority of cases where the laches of the correspondent rather than its default after collection has been in issue, the courts seem to accept this reasoning.[3]

Both views seem to misconceive the relation between the parties, which is in fact one of trust rather than of agency. Upon indorsement by the depositor, the legal title to the draft passes to the depositary bank, which becomes trustee for the depositor. When the bank indorses to its correspondent, the latter takes legal title to the draft in trust for the former, which in turn holds its equitable claim as trustee for the depositor.[4] Since the trustee is not responsible for diminution in value of the *res*, it would follow that the failure of a sub-agent bank after collection casts no liability on a depositary bank.

It has been suggested that the holding of the majority of the courts on this point may be justified by regarding the position of the depositary bank as analogous to that of a *del credere* factor.[5] The advantage gained from the use of the money, which is usually not withdrawn at once after collection, is said to be equivalent to the extra commission of the *del credere* factor as consideration for the guarantee. If there were such additional consideration, while it would be useful as evidence, the necessity would still exist of showing that it was directed to this implied guarantee. Further, the theory seems untenable from the fact that when suit is brought in an individual case, neither has the depositary bank received any of the money, nor has the depositor suffered the legal detriment of promising to leave the money on deposit for any time after its receipt by the bank.

There is, however, ample consideration for the contract of collection,[6] and this without more will support any obligations which may be annexed. In the absence of an express guarantee by the depositary bank of the sum collected by its correspondent, the real question seems to be whether the law will impose such a burden. The answer must depend on what in the general course of business would be fair to both parties. The use of the collections before withdrawal by depositors seems in the long run of sufficient value to compensate for the occasional losses which would be caused, under the rule proposed, by failure of correspondents to account. For this reason it would appear neither unreasonable nor unjust to hold that the depositary bank must be taken to guarantee the proceeds of drafts collected by its correspondent.[7]

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[1] Mackersy *v.* Ramsays, 9 Cl. & Fin. 818; Kent *v.* Dawson Bank, 13 Blatchf. 237; St. Nicolas Bank *v.* State Bank, 128 N. Y. 26; Bradstreet *v.* Everson, 72 Pa. St. 124.

[2] Daly *v.* Butchers', etc., Bank, 56 Mo. 94.

[3] Bank of Louisville *v.* First, etc., Bank, 8 Bax. (Tenn.) 101; Guelich *v.* National Bank, etc., 56 Ia. 434. See 46 Cent. L. J. 127.

[4] Commercial Bank, etc. *v.* Armstrong, 148 U. S. 50. *Contra*, in accord with principal case, Anheuser-Busch, etc., Association *v.* Morris, 36 Neb. 31.

[5] *Cf.* Bank of Utica *v.* McKinster, 11 Wend. (N. Y.) 473; Allen *v.* Merchants' Bank, 22 Wend. (N. Y.) 215, 224, 225. That this is not sufficient to raise a liability for the negligence of the correspondent is argued in 1 Morse, Banks and Banking § 275. The distinction between this guarantee and a general liability for laches is noted in Simpson *v.* Waldby, 63 Mich. 439, 449.

[6] See Smedes *v.* Utica Bank, 20 Johns. (N. Y.) 372.

[7] *Cf.* 1 Morse, Banks and Banking § 276.